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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,170	10/18/2001	James M. Henderson		7805

7590 11/16/2004

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EXAMINER	
NGUYEN, THUKHANH T	

ART UNIT	PAPER NUMBER
1722	

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/982,170	HENDERSON, JAMES M.
	Examiner	Art Unit
	Thu Khanh T. Nguyen	1722

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 September 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date —.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-13 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Ottman (4,153,404) in view of Hereford (5,145,692).

Ottman discloses blocks forming apparatus comprising a front and rear cylinder (33, 43), a front and rear ram (30, 40), a feed chute (24), a charging chamber (48, 18), a mold chamber (18, Fig. 4), and a support frame (14, 16); wherein the feed chute is continuously charged (Figs. 1-4) and the charging chamber functions as a measuring and shaping device prior to the compressing of the rams (col. 3, 46-65); wherein the solid top of the rear ram functions as a shut off valve (26, 50; col. 2, lines 55-64); wherein the rear ram (40) and the front ram (30) and the supporting frames (14, 16) form a square cavity and compress the charging material in one axis, in both the positive and negative direction of the axis. Ottman, however, fails to disclose an indexing plate and a mixing means.

Hereford discloses a brick making apparatus comprising a mixing funnel (74) for mixing the material before feeding material to the molds, an indexing mechanism (51) with an indexing plate (60) connecting to the conveyors (66, 76) for transferring molded block to a remote location, where they are removed or stacked for later use (col. 7, lines 29-38).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify Ottman by providing a mixer and an indexing means as taught by Hereford, because the mixer would mixing different components together to provide a uniform product, while the indexing means would move the molds and the molded blocks in a controlled manner.

In regard to the spacing of the molding units, the dimension of the indexing plate and the shaped of the ram, it would have been obvious to one of ordinary skill in the art to change the size and the shape of the rams, the indexing plate and the spacing between the molds depending on the desired product and the molding conditions. There is no invention in merely changing the shape or form of an article without changing its function except in a design patent. See Eskimo Pie Corp. v. Levous et al., 3 USPQ 23 and In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Response to Arguments

3. Applicant's arguments filed September 27, 2004 have been fully considered but they are not persuasive.

The applicant has argued that the prior art fails to disclose "a continuous mixing apparatus." However, this argument is not commensurate with the scope of the claims. The

claims do not claim a continuous mixing apparatus, but claimed that the feed chute is continuously charged, which Ottman's feed chute 24 is capable of doing (Figures 1-4, 24, 46).

The applicant further alleged that Hereford fails to disclose a shutoff valve; however, Ottman has disclosed a shutoff valve as described above. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that Hereford is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Hereford discloses that the brick forming machine could be used for forming floor tiles, or roof tiles that are made of cement mix of higher moisture content (col. 7, line 57 to col. 8, lines 11). Further Hereford discloses a mixer 58 for mixing material prior to feeding material into the mold (col. 5, lines 19-25). Thus, the use of a mixer for mixing material before compact them into a block is known.

In response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, Both Ottman and Hereford are related to the molding apparatus, in which loose particle are compacted into a block. Therefore, it would have been obvious to one of ordinary skill in the art to combine these references for the improvement of the block-forming apparatus.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 571-272-1136. The examiner can normally be reached on Monday- Friday, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin L. Utech can be reached on 571-272-1137. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TN

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